

## REMARKS/ARGUMENTS

### 1. INTRODUCTION

Claims 58-75 are pending in this application, with claims 61, 64, and 71-75 being withdrawn from consideration. Applicants respectfully request further examination and reconsideration of the application in view of the following arguments.

### 2. REJECTION OF CLAIMS UNDER 35 U.S.C. § 102(E)

Claims 58-60, 62, and 65-69 stand rejected as being anticipated by Cavanaugh (U.S. Patent No. 6,517,051). Without any admission that Cavanaugh negates the patentability of the pending claims, and with full reservation to address this reference substantively in the future, Applicants herewith submit a Declaration of Inventor Pursuant to 37 C.F.R. § 1.131 establishing a date of invention prior to the filing date of Cavanaugh. Accordingly, Applicants submit that Cavanaugh does not qualify as prior art under 35 U.S.C. § 102(e) and that rejection has been overcome. 35 U.S.C. § 102 states:

A person shall be entitled to a patent unless—

...

(e) The invention was described in a patent granted on an application for patent by another filed in the United States *before the invention thereof by the applicant for patent*...

The application for which a patent was granted to Cavanaugh was filed on September 4, 2001 and does not claim priority to any earlier filing date. As set forth in the Declaration, the invention described and claimed in the present application was conceived prior to September 4, 2001. Declaration ¶ 2. Further, a prototype of the claimed support member was constructed

prior to September 4, 2001. Declaration ¶ 3. The invention was diligently pursued until the filing of the parent patent application on February 6, 2002. Declaration ¶ 2.

Because the claimed invention was conceived and diligently pursued prior to the filing date of the application that matured into the Cavanaugh patent, Applicants submit that the rejection of claims 58-60, 62, and 65-69 under 35 U.S.C. § 102(e) has been overcome. Accordingly, Applicants request that the rejection of these claims under 35 U.S.C. § 102(e) be withdrawn.

3. **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

Claims 58-60, 62, 63, and 65-70 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Blatz (U.S. Pat. No. 5,328,154) in view of Cavanaugh.

Applicants respectfully submit that, for the reasons stated above in Section 2, Cavanaugh does not qualify as a prior art reference under 35 U.S.C. § 102.

Accordingly, Applicants request that the rejection of claims 58 and 65 under 35 U.S.C. § 103(a) be withdrawn. Similarly, because each of claims 59, 60, 62, 63, and 66-70 depend from one of the aforementioned independent claims, Applicants submit that the rejection of these claims under 35 U.S.C. § 103(a) is improper and request that the rejection be withdrawn.

4. **CONCLUSION**

A genuine effort to resolve all issues has been made. For at least the above cited reasons, all claims pending in this Application are now believed to be allowable. Applicants respectfully request that any questions or concerns be directed to Applicants' undersigned attorney.

Respectfully submitted,

/Adam B. Strauss/

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Attorney for Applicant(s)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.:	10/813,493	Confirmation No.	4900
In re:	Funk et al.	Art Unit:	3723
Filed:	03/30/2004	Examiner:	Watson, Robert C.
For:	WHEEL POSITIONAL RESTRAINT DEVICE AND METHOD FOR USING THE SAME		
Docket No.:	64,617-013		

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**DECLARATION OF L. REG FUNK  
PURSUANT TO 37 C.F.R. § 1.131**

Dear Commissioner:

I, L. Reg Funk, hereby declare as follows:

1. I am an inventor of each of pending claims 58-75 in the above-identified patent application and an inventor of the subject matter described and claimed therein.

2. Prior to September 4, 2001, I, along with my co-inventor, did conceive the wheel positional restraint device and method for using the same described and claimed in the above-identified patent application in the United States, and did diligently pursue this invention until the filing of the patent application on February 6, 2002.

3. In particular, having earlier conceived of the invention, my co-inventor and I designed a prototype in Canada of the vehicle wheel positional restraint as described and claimed in the above-identified patent application prior to September 4, 2001. Attached hereto as Exhibit A is a photograph of the prototype of the wheel positional restraint we constructed prior to September 4, 2001.

I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, imprisonment, or both, under Title 18, Section 1001 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

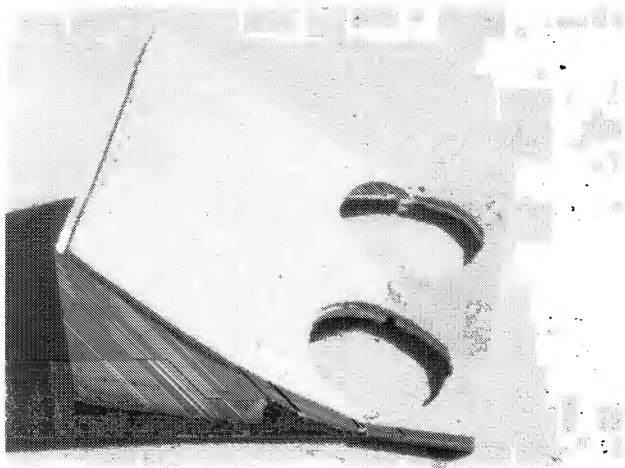
Date: 05/08/06

By:

  
I, Reg Exk

**EXHIBIT A**

**PHOTOGRAPH OF PROTOTYPE OF THE WHEEL POSITIONAL RESTRAINT  
CONSTRUCTED PRIOR TO SEPTEMBER 4, 2001**



BH01/625170.1  
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